



**ARKANSAS INSURANCE DEPARTMENT
LEGAL DIVISION**

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RULE AND REGULATION 19

UNFAIR SEX DISCRIMINATION IN THE SALE OF INSURANCE

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SECTION 1. PURPOSE

The purpose of this rule is to eliminate the act of denying benefits or coverage on the basis of sex or marital status in the terms and conditions of insurance contracts and in the underwriting criteria of insurance carriers. This rule is directed at eliminating two forms of discrimination: (1) overt discrimination which is the act of explicitly and intentionally denying benefits of coverage on the basis of sex, (2) disparate treatment of the sexes, which is the practice of applying different rules for each sex when the same situation prevails.

SECTION 2. AUTHORITY

This rule is issued pursuant to the power given to the Insurance Commissioner by Ark. Stat. Ann. §§ 66-2111, 66-3209, and 66-3001 through 66-3028 and other applicable provisions of the Arkansas Insurance Code.

SECTION 3. APPLICABILITY AND SCOPE

This rule shall apply to all contracts delivered or issued for delivery in This State by an insurer on or after the effective date of this rule and to all existing group contracts which are amended or renewed on or after the effective date of this rule, including group contracts issued in another State insofar as their coverage of residents of this State is concerned. This rule does not apply to or affect the right of fraternal benefit societies to determine eligibility requirements for membership. If a fraternal benefit society does, however, admit members of both sexes, this rule is applicable to the insurance benefits available to members thereof.

This rule shall be effective January 1, 1985.

SECTION 5. DEFINITIONS

- A. "Insurer" means any stock or mutual insurance company, reciprocal insurer, stipulated premium insurer, mutual assessment life or disability insurer, farmers mutual aid association, hospital or medical services corporation, health maintenance organization, or fraternal benefit society.
- B. "Contract" shall mean any contract of insurance, indemnity, medical or hospital service, suretyship or annuity issued, proposed for issuance, or intended for issuance by any person.
- C. "Complications of Pregnancy" means one or more of the following:
 - (1) conditions, requiring hospital confinement (when the pregnancy is not terminated), whose diagnosis are distinct from pregnancy, but are adversely affected by pregnancy or are caused by pregnancy, such as acute nephritis, nephrosis, cardiac decompensation, missed abortion and similar medical and surgical conditions of comparable severity, but shall not include false labor, occasional spotting, physician prescribed rest during the period of pregnancy, morning sickness, hyperemesis gravidarum, pre-eclampsia and similar conditions associated with the management of a difficult pregnancy not constituting a nosologically distinct complication of pregnancy; and
 - (2) (a) non-elective cesarean section, (b) ectopic pregnancy which is terminated and (c) spontaneous termination of pregnancy, which occurs during a period of gestation in which a viable birth is not possible.
- D. "Disability insurer" means any insurer which issues "Disability" insurance as defined in Ark. Stat. Ann. §66-2403, a hospital or medical services corporation or a health maintenance organization.

SECTION 6. UNDERWRITING

Availability of any contract shall not be denied to an insured or prospective insured on the basis of sex or marital status of the insured or prospective insured. However, nothing in this rule shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent's benefits. Specific examples of practices prohibited by this rule include but are not limited to the following:

- A. Denying coverage to females gainfully employed at home, employed part time or employed by relatives when coverage is offered to males similarly employed.
- B. Denying benefits offered by policy riders to females when the riders are available to males.
- C. Requiring the purchase of family coverage under individual or group disability policies providing hospital or medical expense benefits as a prerequisite to obtaining maternity benefits.
- D. Denying, under group contracts, coverage as dependents to husbands of female employees, when similar dependent coverage is available to wives of male employees.
- E. Denying disability income contracts to employed females when coverage is offered to males similarly employed.

SECTION 7. CONTRACT TERMS AND CONDITIONS

The amount of benefits payable, or any term, condition or type of coverage shall not be restricted, modified, excluded, or reduced on the basis of the sex or marital status of the insurer or prospective insured. Specific practices prohibited by this rule shall include but not be limited to the following:

- A. Treatment of complications of pregnancy on a different basis from any other illness or sickness under the contract. Pregnancy on the effective date of the contract may be considered a pre-existing condition to the complication of pregnancy.
- B. Restriction, reduction, modification or exclusion of benefits for disorders of the genital organs of only one sex.
- C. Application of arbitrary waiting period to maternity benefits in such a way as to exclude coverage for premature births when normal maternity benefits are included in the contract.
- D. Offering of lower maximum benefits to females than to males who are in the same risk classifications, solely because of sex.
- E. Providing more restrictive benefit periods or more restrictive definitions of the risk assumed under the contract to one sex than to the other.
- F. Establishing different conditions under which the policyholder may exercise benefit options contained in a contract where the differences are determined by the sex of the insured.
- G. Limiting the amount of coverage an insured or prospective insured may purchase based on the insured's or prospective insured's marital status.
- H. Denying benefits for normal pregnancy to an unmarried female when such benefits are available to a married female. However, this does not mandate coverage for normal pregnancy benefits for dependent children.

SECTION 8. RATES

When rates are differentiated on the basis of sex, the insurer must justify in writing to the satisfaction of the Commissioner, the rate differential. All rates shall be based on sound actuarial principles and a valid classification system and must be related to actual loss statistics, and must use proven loss statistics, where possible.

SECTION 9. CONVERSION

- A. If a dependent spouse becomes ineligible for continuation of coverage under a group insurance contract due to change in marital status, the dependent spouse will be eligible to convert to an individual policy subject to the conditions of the group policy dealing with conversion privileges.
- B. Change in marital status shall not be used as a reason for denying group conversion coverage to group members who wish to exercise their group conversion privileges.

SECTION 10. REVISION OF POLICY FORMS AND CERTIFICATION

- A. All policy forms previously filed and approved by the Department need not be refiled if such forms meet the requirements of this rule. Any previously approved forms which are to be used in this State and which do not comply must be revised and resubmitted in duplicate, with a duplicate letter of transmittal, in accordance with this rule.
- B. All new or revised filings submitted must contain a certification that the submission meets the provisions of this rule as well as all applicable requirements of this Department.

SECTION 11. SEVERABILITY

Any section or provisions of this rule held by a court to be invalid or unconstitutional will not affect the validity of any other section or provision of this rule.

Linda N. Garner
Insurance Commissioner for the
State of Arkansas